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SENATE

REPORT
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EL MALPAIS NATIONAL MONUMENT

JULY 6, 1987.—Ordered to be printed

Filed under authority of the order of the Senate of July 1 (legislative day, June 23), 1987

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 403]

The Committee on Energy and Natural Resources, to which was referred the act (H.R. 403) to establish the El Malpais National Monument and the El Malpais National Conservation Area in the State of New Mexico, to authorize the Masau Trail, and for other purposes, having considered the same, reports favorably thereon with an amendment to the text and recommends that the act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—EL MALPAIS NATIONAL MONUMENT

ESTABLISHMENT OF MONUMENT

SEC. 101. (a) In order to preserve, for the benefit and enjoyment of present and future generations, that area in western New Mexico containing the nationally significant Grants Lava Flow, the Las Ventanas Chacoan Archeological Site, and other significant natural and cultural resources, there is hereby established the El Malpais National Monument (hereinafter referred to as the "monument"). The monument shall consist of approximately 114,000 acres as generally depicted on the map entitled "El Malpais National Monument and National Conservation Area" numbered NM-ELMA-80,001-B and dated May 1987. The map shall be on file and avail-

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able for public inspection in the offices of the Director of the National Park Service, Department of the Interior.

(b) As soon as practicable after the enactment of this Act, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall file a legal description of the monument with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal description and in the map referred to in subsection (a). The legal description shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

TRANSFER

SEC. 102. Lands and waters and interests therein within the boundaries of the monument, which as of the day prior to the date of enactment of this Act were administered by the Forest Service, United States Department of Agriculture, are hereby transferred to the administrative jurisdiction of the Secretary to be managed as part of the monument in accordance with this Act. The boundaries of the Cibola National Forest shall be adjusted accordingly.

MANAGEMENT

SEC. 103. The Secretary, acting through the Director of the National Park Service, shall manage the monument in accordance with the provisions of this Act, the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), and other provisions of law applicable to units of the National Park System. The Secretary shall protect, manage, and administer the monument for the purposes of preserving the scenery and the natural, historic, and cultural resources of the monument and providing for the public understanding and enjoyment of the same in such a manner as to perpetuate these qualities for future generations.

PERMITS

SEC. 104. Where any lands included within the boundary of the monument on the map referred to in subsection 101(a) are legally occupied or utilized on the date of enactment of this Act for grazing purposes, pursuant to a lease, permit, or license which is—

(a) for a fixed term of years issued or authorized by any department, establishment, or agency of the United States, and

(b) scheduled for termination before December 31, 1997.

the Secretary, notwithstanding any other provision of law, shall allow the persons holding such grazing privileges (or their heirs) to retain such grazing privileges until December 31, 1997, subject to such limitations, conditions, or regulations as the Secretary may prescribe to insure proper range management. No grazing shall be permitted on land within the boundaries or the monument on or after January 1, 1998.

TITLE II—MASAU TRAIL

DESIGNATION OF TRAIL

SEC. 201. In order to provide for public appreciation, education, understanding, and enjoyment of certain nationally significant sites of antiquity in New Mexico and eastern Arizona which are accessible by public road, the Secretary, acting through the Director of the National Park Service, with the concurrence of the agency having jurisdiction over such roads, is authorized to designate, by publication of a description thereof in the Federal Register, a vehicular tour route along existing public roads linking prehistoric and historic cultural sites in New Mexico and eastern Arizona. Such a route shall be known as the Masau Trail (hereinafter referred to as the "trail").

AREAS INCLUDED

SEC. 202. The trail shall include public roads linking El Malpais National Monument as established pursuant to Title I of this Act, El Morro National Monument, Chaco Cultural National Historical Park, Aztec Ruins National Monument, Canyon De Chelly National Monument, Pecos National Monument, and Gila Cliff Dwellings National Monument. The Secretary may, in the manner set forth in section 201, designate additional segments of the trail from time to time as appropriate to link the

foregoing sites with other cultural sites or sites of national significance when such sites are designated and protected by Federal, State, or local governments, Indian tribes, or nonprofit entities.

INFORMATION AND INTERPRETATION

SEC. 203. With respect to sites linked by segments of the trail which are administered by other Federal, State, local, tribal, or nonprofit entities, the Secretary may, pursuant to cooperative agreements with such entities, provide technical assistance in the development of interpretive devices and materials in order to contribute to public appreciation of the natural and cultural resources of the sites along the trail. The Secretary, in cooperation with State and local governments, Indian tribes, and nonprofit entities, shall prepare and distribute informational material for the public appreciation of sites along the trail.

MARKERS

SEC. 204. The trail shall be marked with appropriate markers to guide the public. With the concurrence and assistance of the State or local entity having jurisdiction over the roads designated as part of the trail, the Secretary may erect thereon and maintain signs and other informational devices displaying the Masau Trail Marker. The Secretary is authorized to accept the donation of suitable signs and other informational devices for placement at appropriate locations.

TITLE III—EL MALPAIS NATIONAL CONSERVATION AREA

ESTABLISHMENT OF AREA

SEC. 301. (a) In order to protect for the benefits and enjoyment of future generations that area in western New Mexico containing the La Ventana Natural Arch and the other unique and nationally important geological, archeological, ecological, cultural, scenic, scientific, and wilderness resources of the public lands surrounding the Grants Lava Flows, there is hereby established the El Malpais National Conservation Area (hereinafter referred to as the "conservation area"). The conservation area shall consist of approximately 262,690 acres of federally owned land as generally depicted on a map entitled "El Malpais National Monument and National Conservation Area" numbered NM-ELMA 80,001-AB and dated May 1987. The map shall be on file and available for inspection in the offices of the Director of the Bureau of Land Management of the Department of the Interior.

(b) As soon as practicable after the date of enactment of this Act, the Secretary shall file a legal description of the conservation area designated under this section with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives. Such legal description shall have the same force land effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal description. The legal description shall be on file and available for public inspection in the offices of the Director of the Bureau of Land Management, Department of the Interior.

MANAGEMENT

SEC. 302. (a) The Secretary, acting through the Director of the Bureau of Land Management, shall manage the conservation area to protect the resources specified in section 301 and in accordance with this Act, the Federal Land Management and Policy Act of 1976 and other applicable provisions of law, including those provisions relating to grazing on public lands.

(b) The Secretary shall permit hunting and trapping within the conservation area in accordance with applicable laws and regulations of the United States and the State of New Mexico; except that the Secretary, after consultation with the New Mexico Department of Game and Fish, may issue regulations designating zones where and establishing periods when no hunting or trapping shall be permitted for reasons of public safety, administration, or public use and enjoyment.

(c) Collection of green or dead wood for sale or other commercial purposes shall not be permitted in the conservation area.

(d) Except as otherwise provided in section 402(b), within the conservation area the grazing of livestock shall be permitted to continue, pursuant to applicable Federal law, including this Act, and subject to such reasonable regulations, policies, and practices as the Secretary deems necessary.

TITLE IV—WILDERNESS

DESIGNATION OF WILDERNESS

SEC. 401. (a) In furtherance of the purposes of the Wilderness Act (78 Stat. 890; 16 U.S.C. 131), there are hereby designated as wilderness, and, therefore, as components of the National Wilderness Preservation System, the Cebolla Wilderness of approximately 60,000 acres, and the West Malpais Wilderness of approximately 38,210 acres, as each is generally depicted on the map entitled "El Malpais National Monument and National Conservation Area" numbered and NM-ELMA 80,001-B and dated May 1987. The map shall be on file and available for inspection in the offices of the Director of the Bureau of Land Management, Department of the Interior.

(b) As soon as practicable after the date of the enactment of this Act, the Secretary shall file a legal description of each wilderness area designated by this Act with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal description. The legal description shall be on file and available for public inspection in the offices of the Director of the Bureau of Land Management, Department of the Interior.

MANAGEMENT

SEC. 402. (a) Subject to valid existing rights, each wilderness area designated under this Act shall be administered by the Secretary, through the Director of the Bureau of Land Management, in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

(b) Within the wilderness areas designated by this Act, the grazing of livestock, where established prior to the enactment of this Act, shall be permitted to continue subject to such reasonable regulations, policies and practices as the Secretary deems necessary, as long as such regulations, policies, and practices fully conform with and implement the intent of Congress regarding grazing in such areas as such intent is expressed in the Wilderness Act and section 108 of Public Law 96-560 (16 U.S.C. 1133 note).

TITLE V—GENERAL PROVISIONS

MANAGEMENT PLANS

SEC. 501. (a) Within three full fiscal years following the fiscal year of enactment of this Act, the Secretary shall develop and transmit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, separate general management plans for the monument and the conservation area which shall describe the appropriate uses and development of the monument and the conservation area consistent with the purposes of this Act. The plans shall include but not be limited to each of the following:

(1) implementation plans for a continuing program of interpretation and public education about the resources and values of the monument and the conservation area;

(2) proposals for public facilities to be developed for the conservation area or the monument, including a visitors center in the vicinity of Bandera Crater and a multiagency orientation center, to be located in or near Grants, New Mexico, and adjacent to Interstate 40, to accommodate visitors to western New Mexico;

(3) natural and cultural resources management plans for the monument and the conservation area, with a particular emphasis on the preservation and long-term scientific use of archeological resources, giving high priority to the enforcement of the provisions of the Archeological Resources Protection Act of 1979 and the National Historic Preservation Act within the monument and the conservation area. The natural and cultural resources management plans shall be prepared in close consultation with the Advisory Council on Historic Preservation, the New Mexico State Historic Preservation Office, and the local Indian people and their traditional cultural and religious authorities; and such plans shall provide for long-term scientific use of archaeological resources in the

monument and the conservation area, including the wilderness areas designated by this Act; and

(4) wildlife resources management plans for the monument and the conservation area prepared in close consultation with appropriate departments of the State of New Mexico and using previous studies of the area.

(b)(1) The general management plan for the conservation area shall review and recommend the suitability or non-suitability for preservation as wilderness of those lands comprising approximately 17,468 acres, identified as "Wilderness Study Area" (hereafter in this title referred to as the "WSA") on the map referenced in section 101.

(2) Pending submission of a recommendation and until otherwise directed by an Act of Congress, the Secretary, acting through the Director of the Bureau of Land Management, shall manage the lands within the WSA so as to maintain their potential for inclusion within the National Wilderness Preservation System.

(c)(1) The general management plan for the monument shall review and recommend the suitability or non-suitability for preservation as wilderness of all roadless lands within the boundaries of the monument as established by this act except those lands within the areas identified as "potential development areas" on the map referenced in section 101.

(2) Pending the submission of a recommendation and until otherwise directed by Act of Congress, the Secretary, through the Director of the National Park Service, shall manage all roadless lands within the boundaries of the monument so as to maintain their potential for inclusion in the National Wilderness Preservation System, except those lands within the areas identified as "potential development areas" on the map referenced in section 101.

ACQUISITIONS

SEC. 502. Within the monument an the conservation area, the Secretary is authorized to acquire lands and interests in lands by donation, purchase with donated or appropriated funds, exchange, or transfer from any other Federal agency, except that such lands or interests therein owned by the State of New Mexico or a political subdivision thereof may be acquired only by exchange. It is the sense of Congress that the Secretary is to complete the acquisition of non-Federal subsurface interests underlying the monument and the conservation area no later than three full fiscal years after the fiscal year of enactment of this Act.

STATE EXCHANGES

SEC. 503. (a) Upon the request of the State of New Mexico (hereinafter referred to as the "State") and pursuant to the provisions of this section, the Secretary shall exchange public lands or interests in lands elsewhere in the State of New Mexico, of approximately equal value and selected by the State, acting through its Commissioner of Public Lands, for any lands or interests therein owned by the State (hereinafter referred to as "State lands") located within the boundaries of the monument or the conservation area which the State wishes to exchange with the United States.

(b) Within six months after the date of enactment of this Act, the Secretary shall notify the New Mexico Commissioner of Public Lands what State lands are within the monument or the conservation area. The notice shall contain a listing of all public lands or interest therein within the boundaries of the State of New Mexico which have not been withdrawn from entry and which the Secretary, pursuant to the provisions of sections 202 and 206 of the Federal Land Policy and Management Act of 1976, has identified as appropriate for transfer to the State in exchange for State lands. Such listing shall be updated at least annually. If the New Mexico Commissioner of Public Lands gives notice to the Secretary of the State's desire to obtain public lands so listed, the Secretary shall notify the Commissioner in writing as to whether the Department of the Interior considers the State lands within the monument or conservation area to be of approximately equal value to the listed lands or interests in lands the Commissioner has indicated the State desires to obtain. It is the sense of the Congress that the exchange of lands and interests therein with the State pursuant to this section should be completed within two years after the date of enactment of this Act.

MINERAL EXCHANGES

SEC. 504. (a) The Secretary is authorized and directed to exchange the Federal mineral interests in the lands described in subsection (b) for the private mineral interests in the lands described in subsection (c), if—

(1) the owner of such private mineral interests has made available to the Secretary all information requested by the Secretary as to the respective values of the private and Federal mineral interests to be exchanged; and

(2) on the basis of information obtained pursuant to paragraph (1) and any other information available, the Secretary has determined that the mineral interests to be exchanged are of approximately equal value; and

(3) the Secretary has determined—

(A) that except insofar as otherwise provided in this section, the exchange is not inconsistent with the Federal Land Policy Management Act of 1976; and24 (B) that the exchange is in the public interest.

(b) The Federal mineral interests to be exchanged under this section underlie the lands, comprising approximately 15,008 acres, depicted as "Proposed for transfer to Santa Fe Pacific" on the map referenced in subsection (d).

(c) The private mineral interests to be exchanged pursuant to this section underlie the lands, comprising approximately 15,141 acres, depicted as "Proposed for transfer to U.S." on the map referenced in subsection (d).

(d) (1) The mineral interests identified in this section underlie those lands depicted as "Proposed for transfer to Santa Fe Pacific" and as "Proposed for transfer to U.S." on a map entitled "El Malpais Leg. Boundary, HR 3684/S56", revised 5-8-87.

(2) As soon as practicable after the date of enactment of this Act, the Secretary shall file a legal description of the mineral interest areas designated under this section with the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal description. The legal description shall be on file and available for public inspection in the offices of the Director of the Bureau of Land Management, Department of the Interior.

(e) It is the sense of the Congress that all exchanges pursuant to this section shall be completed no later than three years after the date of enactment of this Act.

ACOMA PUEBLO EXCHANGES

SEC. 505. (a)(1) Upon the request of the Pueblo of Acoma, the Secretary shall acquire by exchange any lands held in trust for the Pueblo of Acoma (hereinafter referred to as "trust lands") located within the boundary of the conservation area which the Pueblo wishes to exchange pursuant to this section. Such trust lands shall be exchanged either for—

(A) lands described in subsection (c) (with respect to trust lands west of New Mexico Highway 117); or

(B) public lands of approximately equal value located outside the monument and outside the conservation area but within the boundaries of the State of New Mexico which are selected by the Pueblo of Acoma, so long as such exchange is consistent with applicable law and Bureau of Land Management resource management plans developed pursuant to the Federal Land Policy and Management Act of 1976.

(2) All lands selected by and transferred to the Pueblo of Acoma at its request pursuant to this section shall thereafter be held in trust by the Secretary for the Pueblo of Acoma in the same manner as the lands for which they were exchanged.

(3) Any lands west of New Mexico Highway 117 which are acquired by the Secretary pursuant to this section shall be incorporated into the monument and managed accordingly, and section 104 and all other provisions of this Act and other law applicable to lands designated by this Act as part of the monument shall apply to such incorporated lands.

(b) For purposes of acquiring lands pursuant to subsection (a) of this section, the Secretary, consistent with applicable law and Bureau of Land Management resource management plans described in subsection (a), shall make public lands within the boundaries of the State of New Mexico available for exchange. Nothing in this Act shall be construed as authorizing or requiring revocation of any existing withdrawal or classification of public land except in a manner consistent with applicable law.

(c)(1) The Secretary shall make the lands within the areas identified as "Acoma Potential Exchange Areas" on the map referenced in section 301 available for transfer to the Pueblo of Acoma pursuant to this subsection.

(2) Upon a request of the Pueblo of Acoma submitted to the Secretary no later than one year after the date of enactment of this Act, lands within the areas described in paragraph (1) shall be transferred to the Pueblo of Acoma in exchange for trust lands of approximately equal value within that portion of the conservation

area west of New Mexico Highway 117. The Secretary may require exchanges of land under this subsection to be on the basis of compact and contiguous parcels.

(3) Any lands within the areas described in paragraph (1) not proposed for exchange by a request submitted to the Secretary by the Pueblo of Acoma within the period specified in paragraph (2), and any lands in such areas not ultimately transferred pursuant to this subsection, shall be incorporated within the conservation area and managed accordingly. In addition, any lands in that portion of the areas described in paragraph (1) lying in section 1, township 7N, range 9W, New Mexico Principal Meridian, not transferred to the Pueblo of Acoma pursuant to this subsection shall be added to and incorporated within the Cebolla Wilderness and managed accordingly.

EXCHANGES AND ACQUISITIONS GENERALLY; WITHDRAWAL

SEC. 506. (a) All exchanges pursuant to this Act shall be made in a manner consistent with applicable provisions of law, including this Act, and unless otherwise specified in this Act shall be on the basis of equal value; either party to an exchange may pay or accept cash in order to equalize the value of the property exchange, except that if the parties agree to an exchange and the Secretary determines it is in the public interest, such exchange may be made for other than equal value.

(b) For purposes of this Act, the term "public lands" shall have the same meaning as such term has when used in the Federal Land Policy and Management Act of 1976.

(c) Except as otherwise provided in section 505, any lands or interests therein within the boundaries of the monument or conservation area which after the date of enactment of this Act may be acquired by the United States shall be incorporated into the monument or conservation area, as the case may be, and managed accordingly, and all provisions of this Act and other laws applicable to the monument or the conservation area, as the case may be, shall apply to such incorporated lands.

(d)(1) Except as otherwise provided in this Act, no federally-owned lands located within the boundaries of the monument or the conservation area shall be transferred out of Federal ownership, or be placed in trust for any Indian tribe or group, by exchange or otherwise.

(2) Except as otherwise provided in this Act, and subject to valid existing rights, all Federal lands within the monument and the conservation area and all lands and interests therein which are hereafter acquired by the United States are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws and from location, entry and patent under the mining laws, and from operation of the mineral leasing and geothermal leasing laws and all amendments thereto.

(e) The acreages cited in this Act are approximate, and in the event of discrepancies between cited acreages and the lands depicted on referenced maps, the maps shall control.

(f) The Secretary is authorized to accept any lands contiguous to the boundaries of the Pecos National Monument (as such boundaries were established on the date of enactment of this Act) which may be proposed for donation to the United States. If acceptance of such lands proposed for donation would be in furtherance of the purposes for which the Pecos National Monument was established, the Secretary shall accept such lands, and upon such acceptance such lands shall be incorporated into such monument and managed accordingly.

(g)(1) Capulin Mountain National Monument is hereby redesignated as Capulin Volcano National Monument.

(2) Any reference in any record, map, or other document of the United States of America to Capulin Mountain National Monument shall hereafter be deemed to be a reference to Capulin Volcano National Monument.

(3) Section 1 of the Act of September 5, 1962 (76 Stat. 436) is hereby amended by striking the remaining portion of section 1 after "boundaries of the monument" and inserting "shall include the lands and interests in lands as generally depicted on the map entitled 'Capulin Volcano National Monument Boundary Map' which is numbered 125-80,014 and dated January 1987."

(4) Jurisdiction over federally-owned lands within the revised boundaries of the monument is hereby transferred to the National Park Service, without monetary consideration, for administration as part of the monument.

ACCESS

SEC. 507. In recognition of the past use of the monument and the conservation area by Indian people for traditional cultural and religious purposes, the Secretary

shall insure nonexclusive access to the monument and the conservation area by Indian people for such traditional cultural and religious purposes, including the harvest of pine nuts. Such access shall be consistent with the purpose and intent of the American Indian Religious Freedom Act of August 11, 1978 (42 U.S.C. 1996). As a part of the plans prepared pursuant to section 501, the Secretary, in consultation with appropriate Indian tribes and their traditional cultural and religious authorities, shall define the past cultural and religious uses of the monument and the conservation area by Indian people.

COOPERATION

SEC. 508. In order to encourage unified and cost effective interpretation of prehistoric and historic civilizations in western New Mexico, the Secretary is authorized and encouraged to enter into cooperative agreements with other Federal, State and local public departments and agencies, Indian tribes, and nonprofit entities providing for the interpretation of prehistoric and historic civilizations in New Mexico and eastern Arizona. The Secretary may, pursuant to such agreements, cooperate in the development and operation of a multiagency orientation center and programs on lands and interests in lands inside and outside of the boundaries of the monument and the conservation area generally, with the concurrence of the owner or administrator thereof, and specifically in or near Grants, New Mexico, adjacent to Interstate 40 in accordance with the plan required pursuant to section 501.

WATER RIGHTS

SEC. 509. (a) Congress expressly reserves to the United States the minimum amount of water required to carry out the purposes for which the national monument, the conservation area, and the wilderness areas are designated under this Act. The priority date of such reserved rights shall be the date of enactment of this Act.

(b) Nothing in this section shall affect any existing valid or vested water right, or applications for water rights which are pending as of the date of enactment of this Act and which are subsequently granted: *Provided*, That nothing in this subsection shall be construed to require the National Park Service to allow the drilling of ground water wells within the boundaries of the national monument.

(c) Nothing in this section shall be construed as establishing a precedent with regard to any future designations, nor shall it affect the interpretation of any other Act or any designation made pursuant thereto.

AUTHORIZATION

SEC. 510. There is authorized to be appropriated $16.5 million for the purposes of this Act, of which $10 million shall be available for land acquisition in the national monument; $1 million shall be available for development within the national monument; $4 million shall be available for land acquisition within the conservation area; $1 million shall be available for development within the conservation area; and $500,000 shall be available for planning and develoment of the Masau Trail.

PURPOSE OF THE MEASURE

The purpose of H.R. 403 are to: establish a national monument (managed by the National Park Service) and a national conservation area (managed by the Bureau of Land Management) in the El Malpais area of western New Mexico; provide for designation of existing roads linking a variety of prehistoric and historic cultural sites in New Mexico and eastern Arizona as the "Masau Trail"; designate certain lands as wilderness; and provide for management of the national monument and national conservation area designated by the bill.

BACKGROUND AND NEED

El Malpais, which means "bad country" in Spanish, is a large volcanic region located near Grants, New Mexico, approximately 75 miles west of Albuquerque. The area consists of at least five different lava flows, one of which is estimated to be only 600 to 1,300

years old, making it one of the most recent lava flows in the continental United States. In addition, the entire area is rich in extremely high-value, high-density archeological resources in thousands of separate archeological sites.

The public lands surrounding the Grants lava flow in northwestern New Mexico have long been recognized as an area of unique and nationally significant natural and cultural values.

The area was studied by the National Park Service in 1969 as a potential national monument. The study found the area to be of national significance and suitable for protection as a national monument. At the same time, the area was listed by the Park Service as a National Natural Landmark.

In 1974, the area was designated as both an Outstanding Natural Area and a Natural Environment Area by the Bureau of Land Management (BLM). In 1976, through the passage of the Federal Land Policy and Management Act (FLPMA), Congress directed the BLM to study the wilderness resources of the area and required the President to transmit a report to the Congress by November 1982, together with recommendations as to whether the area should be designated as part of the National Wilderness Preservation System. Congress has not received this report.

The area includes over 3,500 archeological sites. Many of these sites are relics of the prehistoric Chacoan system and of the related but more recent Acoma Cultural Province. Examples are large pueblos, Kivas, pit houses, and rock art. Protection of these resources, and thus enhancement of future research concerning them, is an important reason for enactment of this bill.

Legislative History

H.R. 403 passed the House of Representatives on June 3, 1987. A companion measure, S. 56 was introduced on January 6, by Senator Domenici and Senator Bingaman. A hearing before the Public Lands, National Parks and Forests Subcommittee on S. 56 was conducted on February 19.

At a business meeting on June 25, 1987, the Senate Committee on Energy and Natural Resources ordered H.R. 403, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on June 25, 1987, by a unanimous vote of a quorum present recommends that the Senate pass H.R. 403 if amended, as described herein.

The rollcall vote on reporting the measure was 18 yeas, 0 nays as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Metzenbaum *	
Mr. Bradley *	
Mr. Bingaman	

Mr. Wirth
Mr. Fowler
Mr. Conrad *
Mr. McClure *
Mr. Hatfield *
Mr. Weicker *
Mr. Domenici
Mr. Wallop
Mr. Murkowski
Mr. Nickles *
Mr. Hecht
Mr. Evans

* Indicates voted by proxy.

COMMITTEE AMENDMENT

Prior to the Committee's consideration of this measure (and prior to the final passage of H.R. 403 by the House) Senators Domenici and Bingaman drafted and circulated an amendment in the nature of a substitute to the Senate companion measure, S. 56. The provisions of that amendment were adopted by the Committee, with only minor modification, as a substitute text for H.R. 403. Since the provisions of the substitute amendment were very similar to the bill ultimately passed by the House, there are few differences in the Committee reported substitute and H.R. 403.

Therefore, a discussion of those differences, as well as the other provisions of the Committee reported bill, have been incorporated into the "Section-by Section Analysis" below.

SECTION-BY-SECTION ANALYSIS

TITLE I—EL MALPAIS NATIONAL MONUMENT

Section 101 designates as a national monument about 114,000 acres in western New Mexico which contain highly significant natural and cultural resources. The Committee substitute references a different map than H.R. 403 as passed the House. This new reference was necessary to reflect a minor change in the boundary of the Cebolla wilderness which deleted the Cebollita Spring from the wilderness—a deletion of approximately 20 acres.

Section 102 provides that certain land within the Cibola National Forest will be transferred from the management of the Forest Service to that of the Secretary of the Interior to be administered as part of the national monument.

Section 103 requires the Secretary of the Interior, acting through the National Park Service, to manage the monument in accordance with the laws that apply to units of the National Park System. It also lists the management of the monument.

Section 104 requires the Secretary to allow those persons who, on the date of enactment, have permits to graze livestock on lands within the monument (or their heirs) to retain their grazing privileges until December 31, 1997. The Secretary may place limitations on grazing under these permits to ensure proper range management. On January 1, 1998, grazing within the monument would cease.

TITLE II—MASAU TRAIL

Section 201 authorizes the Secretary, acting through the National Park Service and with the concurrence of the agency with jurisdiction over the roads involved, to designate a vehicular tour route along existing roads linking prehistoric and historic cultural sites in New Mexico and eastern Arizona, to be known as the Masau Trail.

Section 202 specifies that the trail designated pursuant to section 201 will initially link the El Malpais National Monument with El Morro National Monument, Chaco Cultural National Historical Park, Aztez Ruins National Monument, Canyon De Chelly National Monument, Pecos National Monument, and the Gila Cliff Dwellings National Monument. It also authorizes the Secretary to designate additional segments of the trail in the future to link these areas with other cultural sites or sites of national significance that are designated and protected by Federal, State, or local governments, Indian tribes, or nonprofit entities.

Section 203 authorizes the Secretary to enter into cooperative agreements with entities administering sites linked by the trail and, pursuant to such agreements, to provide technical assistance in the development of interpretive devices and materials with respect to the natural and cultural resources of such sites. It also requires the Secretary, in cooperation with State and local governments, Indian tribes, and nonprofit entities, to prepare and distribute information material for public appreciation of sites along the Masau Trail.

Section 204 provides that the Masau Trail will be marked with appropriate markers and authorizes the Secretary to accept donations of suitable signs and other informational devices to mark the trail.

The Committee believes that the National Park Service should work closely with the State of New Mexico in the construction and erection of trail markers along the roadways which will link the sites which are part of the Masau Trail. The costs of constructing and erecting the markers should be borne by the involved States and the Federal Government, pursuant to the cooperative agreements envisioned in section 203 of the Act.

The volcanic escarpment which runs along Albuquerque's west mesa contains thousands of historic Indian and Hispanic petroglyphs and numerous archeological sites. The unique natural and cultural resources of the west mesa escarpment have led concerned members of the community to propose the creation of a unit of the National Park System at the escarpment. Such a park unit would complement the units which would be incorporated into the Masau Trail by H.R. 403 as reported and would be an outstanding addition to the trail. Therefore, the Committee believes that, if a unit of the National Park Service is established at the west mesa escarpment in Albuquerque, it should be incorporated into the Masau Trail.

TITLE III—EL MALPAIS NATIONAL CONSERVATION AREA

Section 301 establishes a national conservation area of approximately 262,690 acres to be managed by the Bureau of Land Management. The conservation area is adjacent to the national monu-

ment and is established to protect natural, cultural, scenic and wilderness resources of national importance. In order to provide a presence for the BLM in the National Conservation Area and in order to permit the Bureau to monitor activities in the conservation area, the Committee expects that the BLM will erect a ranger station along State Road 117.

Section 302(a) requires the Secretary to manage the conservation area for the protective purposes specified in section 301 and in accordance with applicable provisions of law pertaining to public lands managed by the BLM. The Committee notes that in several instances the legislation refers to "resource management plans" prepared by the BLM. These references refer to the land use plans required by the Federal Land Policy and Management Act.

Subsection (b) specifies that hunting and trapping in the conservation area are to be permitted; however, the Secretary may limit these activities in certain areas and for specific periods of time after consulting with the State of New Mexico.

Subsection (c) prohibits commercial wood collection.

Subsection (d) specifies that livestock grazing is to be permitted to continue in the conservation area subject to regulation by the Secretary, in accordance with applicable existing law.

TITLE IV—WILDERNESS

Section 401 designates two wilderness areas with the national conservation area. They are the Cebolla Wilderness (approximately 60,000 acres) and the West Malpais Wilderness (approximately 38,210 acres). The section requires the Secretary to prepare and file with appropriate Congressional Committees a legal description of each of these areas.

Section 402 requires the Secretary, through the BLM, to manage areas designated as wilderness in accordance with the Wilderness Act of 1964, and reiterates that grazing is to be permitted to continue in the wilderness areas, subject to regulation by the Secretary, in accordance with existing law.

TITLE V—GENERAL PROVISIONS

Section 501 outlines planning requirements for the national monument and the national conservation area.

Subsection (a) requires the Secretary of the Interior, within 3 years, to develop and transmit to the appropriate Committees of Congress separate general management plans for the monument and the national conservation area. Each plan must include at least four components—an interpretation and public education plan, a public facilities plan that includes both a visitor center and a multiagency orientation center, a natural and cultural resource plan, and a wildlife management plan.

The Committee does not in any way intend the designation of the new wilderness areas to exclude or exempt these areas from the cultural resource plans to be developed in accordance with section 501(a)(3) and the long-term scientific use of the archeological values which they contain. The BLM should permit appropriate forms of archeological research and related activities to occur witin the wilderness, including the identification, excavation, stabilization, con-

servation and protection of cultural resource sites. Short-term disturbances which may result from these activities will be rehabilitated. The long-term scientific use of the archeological values within the wilderness areas is in conformance with the wilderness use concept of section 4(b) of the Wilderness Act which states that—

> . . . wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, education, conservation and historic use.

Subsection (b) of section 501 identifies a wilderness study area of approximately 17,500 acres within the national conservation area. The general management plan for the national conservation area shall include a review of the suitability of these lands for designation as wilderness and lead to submission to Congress of a recommendation on this subject. The Secretary of the Interior is required to protect the wilderness potential of the study area until completion of the plan.

Subsection (c) provides for wilderness study of lands within the national monument. Paragraph (1) provides that the general management plan shall include a review and recommendation with regard to the suitability of wilderness designation for all roadless lands in the monument, except for the areas identified as "potential development areas." Paragraph (2) provides for the interim management of the areas subject to this wilderness study, pending submission of a recommendation to the Congress. This subsection should not, however, be interpreted as precluding the Park Service from improving access and providing interpretive and recreational facilities in areas currently penetrated by roads prior to Congressional action on the wilderness recommendations.

It is the intention of the Committee that the National Park Service apply the same criteria for determining which lands are "roadless" as would be applied by the BLM; that is, the definition of "road" found in the BLM's wilderness inventory policy should be used. It is not the intention of the Committee to suggest that identification or areas as "potential development areas" should be construed as mandating any development in those areas, or as precluding the National Park Service from deciding to include some or all of those areas in its wilderness study. The "potential development areas" are excluded from the mandatory wilderness study because there are areas where the Park Service may decide to undertake activities which would be incompatable with wilderness designation—but such a decision is left to the agency's discretion.

The Committee is concerned that unexploded military ordnance within the national monument and the national conservation area presents a danger to visitors and to other users of the area. The Committee urges that, since the Department of Defense is responsible for the removal of the military ordnance, the Department of the Interior enter into a cooperative agreement with the Department of Defense for a survey of the national monument and the national conservation area to identify the location of military ordnance dropped during World War II military bombing practices and to undertake a surface clearance of those areas identified as containing military ordnance.

Section 502 authorizes the Secretary of the Interior to acquire lands and interests in lands within the monument and national conservation area. Any such lands owned by the State of New Mexico, however, can be acquired only by exchange. The section states that Congress expects the Secretary to acquire subsurface interests within 3 fiscal years after enactment. However, if such acquisition is not completed in this time frame, the Secretary's authority to complete acquisition remains in effect. The Committee notes that lands held in trust for an Indian tribe (such as those held for the Pueblo of Acoma) cannot be the subject of condemnation; and the Committee expects that there will be no need to acquire Indian lands not so held except through mutual agreement between the Secretary and the Indian owners.

Section 503 outlines procedures for exchanging State of New Mexico lands that are within the national monument and national conservation area for BLM-managed public lands outside these areas, but still within the state.

Subsection (a) requires the Secretary of the Interior, if requested by the State of New Mexico, to allow the State to select public lands or interests therein of approximately equal value, for transfer to the State in exchange for State lands inside the monument or conservation area.

Subsection (b) requires the Secretary to give the New Mexico Commissioner of Public lands two lists of lands within 6 months after enactment. One list is to include all State lands within the national monument and the national conservation area. The other list is to specify all BLM-managed public lands within New Mexico that the Secretary has identified as appropriate with the Federal Land Policy and Management Act of 1976. This second list is to be updated annually. If the New Mexico Commissioner notifies the Secretary of the State's desire to make such an exchange, the Secretary will determine if the lands sought by the State are of approximately equal value to the State lands being offered for transfer to the United States. The subsection instructs the Secretary that Congress expects completion of these State exchanges within 2 years. However, if such exchanges are not completed in this time frame, the Secretary's authority to complete the exchanges remains in effect.

Section 504 outlines an exchange of certain mineral interests between the United States and Santa Fe Pacific Industries, intended to result in Federal acquisition of specific Santa Fe interests located within the El Malpais area.

Subsection (a) authorizes and directs the Secretary of the Interior to carry out this specific exchange, provided that three conditions are met: (1) Santa Fe Pacific Industries must provide the Secretary with all the information the Secretary requests on the values of the interest involved; (2) the Secretary must determine that the mineral interests to be exchanged are of approximately equal value and; (3) the Secretary must determine that the exchange is in the public interest and is not inconsistent with the Federal Land Policy and Management Act of 1976 (FLPMA) except to the extent provided for in this section.

Subsection (b) identifies by an appropriate map reference Federal mineral interests, comprising approximately 15,008 acres, proposed

to be transferred to Santa Fe Pacific Industries. The interests are on BLM-managed public lands outside the national monument and national conservation area, but within New Mexico.

Subsection (c) identifies by an appropriate map reference the Santa Fe mineral interests, comprising approximately 15,141 acres, proposed to be transferred to the United States.

Subsection (d) identifies the map that depicts these mineral interests and directs the Secretary to file a legal description of these lands with the appropriate Congressional Committees.

Subsection (e) instructs the Secretary that Congress expects the completion of this exchange within 3 years. However, if such exchanges are not completed in this time frame, the Secretary's authority to complete the exchange remains in effect.

Section 505 outlines procedures for land exchanges with the Pueblo of Acoma, if the Pueblo desires any such exchanges. It is the Committee's intent that the management of the national monument and national conservation area be sensitive to the needs of native American groups. The boundary of the national monument was adjusted to exclude Acoma trust lands, and the boundary of the Cebolla Wilderness was adjusted to allow continued road access through non-wilderness to Acoma deeded lands within the national conservation area. Acoma cattle (like those of other grazing permittees) may continue to graze within the national monument for 10 years and within the Cebolla Wilderness indefinitely. In addition, this section allows the Acoma to exchange out any of their trust lands that are inholdings with the national conservation area. However, such exchanges are not mandatory and would not take place unless requested by the Pueblo.

Subsection (a) authorizes the Secretary of the Interior, at the request of the Acoma, to acquire by exchange any Acoma trust lands within the national conservation area. (Without such authorization, no trust lands can be acquired for inclusion in the monument or conservation area, by exchange or otherwise). These trust lands may be exchanged for BLM administered public lands in one of two different locations: (A) subject to limits in subsection (b) certain specified lands identified as "Acoma Potential Exchange Areas," which are within the boundaries of the national conservation area and may be transferred to the Pueblo only in exchange for Acoma trust lands located within the portion of the conservation area west of New Mexico Highway 117; and (B) public lands of approximately equal value selected by the Acoma which are outside the national conservation area (but within New Mexico), so long as such exchanges are consistent with BLM land use plans developed pursuant to the Federal Land Policy and Management Act of 1976. Lands acquired by the Acoma would be held in trust and any Acoma trust lands west of Highway 117 acquired by the United States would become part of the national monument.

Subsection (b) requires the Secretary of the Interior to make BLM-managed public lands within New Mexico available to the Acoma for exchange.

Subsection (c) requires the Secretary of the Interior to make the "Acoma Potential Exchange Areas" within the national conservation area available for exchange. However, to obtain any of these lands, the Pueblo must offer in exchange trust lands of equal value

west of Highway 117 and it must submit its request to the Secretary within 1 year after enactment. When this period has elapsed, any "Acoma Potential Exchange Lands" not subject to a request would be incorporated into the national conservation area.

In order to keep the cost of acquiring lands within the boundaries of the national monument and the national conservation area as low as possible, the Committee believes that the National Park Service and the Bureau of Land Management should pursue exchanges prior to acquisition by purchase where it is feasible and the land owner expresses an interest in an exchange. Furthermore, the power of condemnation should be exerted only as a last resort.

The Committee does not intend that the designation of the national conservation area be interpreted as a directive to consolidate all land within the conservation area in Federal ownership. When private land within the conservation area needs to be acquired, it should be acquired only with the consent of the property owner, unless there is an imminent threat that the land is to be developed in a manner that would be detrimental to the purposes for which the conservation area was established.

In this regard, the Committee has attempted to accomodate the needs of existing landowners and land users in the areas to be deisgnated under this Act. The Committee believes that the National Park Service and the BLM should continue to cooperate with these existing landowners and land users. In particular, the Committee believes that, wherever possible, existing routes of access to private property should be maintained.

In addition, the National Park Service should work cooperatively with range users to provide appropriate fencing between the national monument and areas in the national conservation area where grazing is present. Consideration needs to be given to the natural characteristics of such areas. To control livestock movement, natural barriers and gap fences should be used as much as possible in order to minimize the construction of permanent fences which would otherwise degrade the natural characteristics of the areas, even though this may result in the sporadic trespass of cattle into the national monument.

Section 506 contains several general provisions relating to lands in the national monument and national conservation area.

Subsection (a) requires that exchanges involving these lands generally be on the basis of equal value unless otherwise specified and that cash can be used to equalize an exchange. However, if both parties agree and the Secretary of the Interior determines that it is in the public interest, exceptions may be made to the equal value provision.

Subsection (b) defines the term "public lands" as having the same meaning as it does in the Federal Land Policy and Management Act of 1976.

Subsection (c) provides that any State or private lands acquired by the United States that lie within the national monument or national conservation area would be incorporated into the monument or conservation area and managed accordingly.

Subsection (d) prohibits federally-owned lands within the national monument or national conservation area from being transferred out of Federal ownership (except as provided elsewhere in the bill)

or placed in trust. It also withdraws the Federal lands in both areas from mineral entry, subject to valid existing rights.

Subsection (e) provides that all acreage figures in the bill are approximate and that the referenced maps are to be controlling.

Subsection (f) authorizes the Secretary of the Interior to accept any lands that are contiguous to the Pecos National Monument which may be proposed for donation to the United States. To the extent acceptance of such proposed donation would further the purposes for which such monument was established, the acceptable is mandated and the donated lands would become part of the monument.

Subsection (g), which was not included in the House-passed bill, redesignates the Capulin Mountain National Monument in New Mexico as the Capulin Volcano National Monument and would add approximately 17.5 acres of federally-owned land now managed by the BLM to the monument. It should be noted that the House has passed and sent to the Senate identical but separate legislation (H.R. 401) which is pending before the Committee. The Committee agreed to include this language in H.R. 403.

Section 507 requires the Secretary to permit nonexclusive access for continued traditional cultural and religious use of the national monument and national conservation area by Native Americans, consistent with the intent and purpose of the American Indian Religious Freedom Act. The Secretary must consult appropriate Indian tribes and their traditional cultural and religious authorities, in connection with preparation of the general management plans, or order to define what these uses have been.

Section 508 authorizes and encourages the Secretary of the Interior to enter into cooperative agreements with other agencies and groups to further the interpretation of the prehistoric civilizations of New Mexico and eastern Arizona. Specifically, the Secretary is encouraged to cooperate in the development of a multiagency orientation center in or near Grants, New Mexico.

Section 509, which was not included in the House-passed version, deals with the reservation of water in the area by the United States.

Subsection (a) provides for the express reservation by Congress of the minimum amount of water required to carry out the purposes for which the monument, conservation area and wilderness area are designated. The priority date of such reservation is the date of enactment of this Act.

Subsection (b) is a savings clause making it clear that this section does not affect any existing valid or vested water right or applications for water rights which are pending on the date of enactment. Nothing in his subsection is to be construed as requiring the National Park Service to allow the drilling of groundwater wells within the national monument.

Subsection (c) provides that nothing in this section establishes a precedent with regard to future designations nor does it affect the interpretation of any other act or any designation made pursuant to such Act.

It is the intent of the Committee that the express reservation of water for the national monument, wilderness and conservation area designations in this Act applies only to this Act. It is also the

intent of the Committee that this action not prejudice any past, ongoing or future judicial interpretation of the Federal reserved rights doctrine except with respect to this Act. The intent of the Committee is to provide a Federal water right with the same relationship to more senior water rights as any other water right granted under State law having the same priority date as the Federal right.

The area affected by this Act has extremely limited surface water, all of which is fully appropriated. These appropriations are senior to any reserved right created by this legislation. There are numerous wells and pending applications for wells in the area. The existing wells have a priority date senior to the Federal reserved right, and the pending applications, if perfected, would have priority dates as of their dates of the application, which are also senior to the reserved right. The Committee does not anticipate any conflict between the Federal Government's need for water and any valid existing or pending rights in the area.

Section 510 authorizes the appropriation of $16.5 million for the purposes of the Act and specifically provides how the funds are to be distributed between the monument, the conservation area and the trail. The House-passed bill authorized such sums as may be necessary to carry out the provision of the Act.

Cost and Budgetary Considerations

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 403. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 403, as reported.

Executive Communications

On January 21, 1987, the Committee on Energy and Natural Resources requested legislative reports from the Department of Interior and the Office of Management and Budget setting forth executive agency views on the Senate companion bill, S. 56. These reports had not been received at the time the report on H.R. 403 was filed. The pertinent legislative report received by the House Committee on Interior and Insular Affairs from the Department of the Interior setting forth executive agency recommendations relating to H.R. 403 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY.
Washington, DC, May 15, 1987.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on H.R. 403, a bill "To establish the El Malpais National Monument, the Masau Trail, and the Grants National Conservation Area in the State of New Mexico, and for other purposes."

We can support H.R. 403, but only if it is modified to reflect the recommendations discussed below.

The El Malpais has been studied by both the National Park Service (NPS) and the Bureau of Land Management (BLM), and both agencies agree the El Malpais contains qualities which qualify parts of it for wilderness and/or monument status. However, the formal study and review process for wilderness designation has not been completed. Recommendations as to wilderness suitability as required by section 603 of the Federal Land Policy and Management Act have not yet been made to the Secretary. The Secretary, in turn, will make a final Departmental recommendation to the President who will forward his Statewide recommendations to Congress for action. We believe this congressionally-mandated process should be allowed to work.

We fully appreciate the level of interest in establishing a conservation-based unit in the area. However, we remain concerned about the impacts of H.R. 403 on issues related to dual management, wilderness designation, costs, water rights, mineral rights, Indian tribes, and grazing. We urge that H.R. 403 be amended to address these concerns.

Our objective is to reach an amicable resolution of the issues before us which will ensure that we can manage and protect the resources of El Malpais and surrounding areas for generations to come and do so in a manner which protects the interests of the American taxpayer. We believe that we can work with the members of the New Mexico delegation and others in the Congress to arrive at a proposal which will allow us to manage, preserve, and promote the area in the most efficient, appropriate manner.

If enacted, H.R. 403 would provide for the establishment of a 127,818-acre El Malpais National Monument under the jurisdiction of the National Park Service, establish a 253,000-acre Grants National Conservation Area under the jurisdiction of the Bureau of Land Management, and designate 115,000 acres as wilderness under the jurisdiction of the Bureau of Land Management. Further, the Secretary of the Interior would be authorized to designate a vehicular route along public roads known as the "Masau Trail" that identifies certain significant sites of antiquity in western New Mexico, including El Morro National Monument, Chaco Culture National Historical Park, Aztec Ruins National Monument, and Canyon De Chelly National Monument. Additional segments of the trail, leading to sites protected by Federal, State, or local governments, Indian tribes, or nonprofit entities, may be added from time to time under a cooperative agreement. Coordinated management

plans for both the monument and the conservation area would be required within two years from the date of enactment, which shall include:

(1) implementation plans for a continuing program of interpretation and public education about the resources and values of the two areas;

(2) public facilities, including a visitor center at or near Bandera Crater, as well as a multiagency orientation center at or near Grants, New Mexico, and adjacent to Interstate 40;

(3) natural and cultural resources management plan for the two areas; and

(4) a wilderness study of national monument lands.

We are concerned that proper land management decisions be made for this area. At the same time, we are concerned that the costs not be higher than they need to be to accomplish appropriate management and conservation of the area's resources. Additionally, we are concerned about adding to the substantial private land inholdings already within units of the National Park System that may ultimately be acquired. From our review, it appears that H.R. 403 would establish a monument configuration which includes considerable acreage that is excess to the amount necessary to achieve resource conservation objectives. Some of these lands are under the jurisdiction of the Forest Service and others in private ownership. We do not believe it is necessary to incur the cost of acquiring the privately owned lands, which is estimated to be $14.5 million. We are also concerned with the long-term cost of operating an area of this size; however, the precise amount of such costs will be determined as a result of the planning process.

We believe that including all of the private lands is unfair to the owners since there is no assurance when they will get timely compensation for their property. To minimize such problems, we are willing to work with Congress to redefine the proposed boundary of the national monument to ensure that the appropriate resources are included within the boundary while at the same time minimize the potential conflict with individuals who depend on the current multiple-use management of this acreage. For inholdings that may remain, we would work with owners to provide a model of public and private cooperation. Such cooperation, for example, could include working with the owners of the Bandera Ice Cave and other local private landowners to provide interpretive programs for their current activities, including grazing. For example, the Pueblo of Acoma tribe now has 9,600 acres of grazing allotments within the proposed management area.

We also believe the requirement that the Department conduct a wilderness study of the national monument land is unnecessary. BLM has completed its study of this area and an additional study would be duplicative. Furthermore, the NPS general management planning process will help determine the varying types and levels of use or protection for monument lands. Therefore, we recommend that you delete this wilderness study provision.

Another measure to mitigate the cost issue is our proposal that language be included in H.R. 403 that land exchanges would be the preferred alternative to appropriated funds for any necessary land acquisition.

We also have concerns regarding the cost to implement the proposal for two visitor/interpretive facilities, one to be located within the national monument boundary and one to be located in or near Grants, New Mexico. We are confident that one visitor/interpretive center near Grants can serve the purposes of this legislation. The facility proposed for Interstate 40, which is just a few miles from El Malpais, can contain information on both the El Malpais area as well as the Masau Trail. We therefore suggest that a single interagency orientation center would meet the needs of visitors to the area and provide appropriate multiagency representation. Further, we believe that the State of New Mexico should participate as a partner in this effort.

Another concern with H.R. 403 is the expansion of Departmental bureau presence in the area. Multiple bureau involvement will increase the costs without commensurate public benefits. The Congress should be aware that simply having the National Park Service present to manage a national monument will not ensure increased visitation or tourism. We believe the area will attract visitors regardless of the primary managing agency, especially with an effective State or local promotional campaign designed to attract tourists. This is, perhaps, the ultimate key to growth of tourism.

With regard to the designation of BLM wilderness as proposed in the bill, we testified last year that the study process had not been completed on the entire area. We testified that legislation was premature, and we believed the wilderness proposal should be considered only in the context of an analysis of the entire State of New Mexico. We remain convinced that piecemeal wilderness consideration should not be continued. Since last year's hearing, the draft environmental Impact Statement on the Statewise wilderness program has been published an the public comment process has been completed. Included in that document are recommendations for favorable designation of the four wilderness study areas (WSAs) located east of Highway 117. The United States Geological Survey and Bureau of Mines have been asked to complete detailed mineral surveys on these four WSAs. Much of the basic geology of these four WSAs was mapped as part of a report completed in January 1982. Parts of the WSAs still require some geologic mapping and the studies underway will finish such mapping, complete sample taking and analyze the geochemistry of the area. Based on this information, the agencies will then complete their evaluations of the mineral potential of the areas. Initial indications are that minerals present have low economic development potential. We recommend these surveys be completed before wilderness designations are determined. The present studies include 60,742 acres. The final reports are due to be completed by September 30, 1989, with a draft report to be available six months earlier.

With regard to the boundaries of the proposed National Conservation Area, we suggest that several areas should be deleted from this bill, including the "upper neck" of the proposed National Conservation Area which runs to Interstate 40 on the northeast side of the proposed monument. The characteristics of this area do not enhance the overall quality of the area proposed to be included in the National Conservation Area. This could eliminate major areas of private land. There are several other minor boundary changes that

we are prepared to suggest in working with the Congress. These adjustments, along with our continuing effort to ascertain the amount and location of any coal resources, will help eliminate the need for unnecessary land and mineral exchanges and would assist in better management of the areas.

Regarding the impact of H.R. 403 on Indian tribes, we have two comments, First, we note that in 1977, the Pueblo of Acoma purchased approximately 3,900 acres of land referred to as the Berryhill Ranch. These lands were taken into trust for the Pueblo at the time of acquisition and later declared to be part of the Acoma Reservation by Secretarial Proclamation in 1981. Approximately 720 acres of these reservation lands lie within the proposed monument boudaries. Similarly, the purchase of Berryhill ranch included the purchase of grazing allotments held by the ranch, and approximately 9,600 acres of these grazing allotments lie within the proposed monument and would be subject to termination under terms of the proposed legislation. The above-noted areas all lie on the eastern boundary of the proposed monument. Accordingly, a comparative minor adjustment in the proposed boundaries of the monument could be made, eliminating the conflict between the public interest and the Government's trust responsibility to the Pueblo of Acoma. Accordingly, we recommend that such a boundary adjustment be made excluding all lands and grazing allotments owned by the Pueblo of Acoma from the national monument.

As to Federal reserved water rights, they are inferred by courts whenever Congress establishes new national monuments. The existence of reserved water rights in wilderness areas, however, is currently under litigation. Consequently, rather than relying on the courts to discern congressional intent, we strongly urge Congress to specify what water rights will be set aside. The Department appreciates the sensitively of western water issues and believes these issues should be addressed in this legislation.

Finally, regarding the designation of the Masau Trail, we note that the purpose of the trail is to introduce visitors to the wealth of historic, cultural, and natural sites in northwestern New Mexico and to present a complete picture of the regional Indian culture. This legislation would establish a cooperative effort among local, State, and Federal agencies to facilitate the linkage of a number of historic and cultural sites throughout northwestern New Mexico.

By establishing this conceptual trail approach, we can provide a multitude of experiences for visitors, students, and scholars. While we estimate the cost of planning the appropriate route to be approximately $100,000, we believe that appropriate signing could be accomplished through the use of existing State funds. The trail itself would be promoted through the multiagency Interstate 40 visitor and interpretive center near Grants. The Ancient Ones who belonged to the Anasazi civilization that populated the Four Corners area did not recognize current State borders. The concept of the Masau Trail is the real key to this legislation and presents everyone involved in this matter with a great opportunity.

As stated above, the Department is prepared to work with the Congress on these points in order to develop legislation which can support to ensure the most efficient, cost-effective approach to pro-

vide for the protection and preservation of El Malpais and surrounding areas.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

WILLIAM P. HORN,
Assistant Secretary.

ADDITIONAL VIEWS OF SENATORS McCLURE AND WALLOP

This legislation, following the action taken last Congress on military withdrawals and Great Basin, specifically addresses the issue of reserved water rights. Although Congress has occasionally addressed the subject, in general we have not felt the need because the doctrine of implied reservation of water rights has been very narrowly construed by the courts. The courts have held that upon an initial withdrawal and reservation of land from the public domain, Congress intends to reserve the minimum quantity of water appurtenant to the lands withdrawn which is then unappropriated to fulfill the primary purposes of the reservation. To date, the courts have recognized the principles of state jurisdiction over the allocation and use of water and limited the scope of this preemption of state substantive law. For example, in *U.S.* v. *New Mexico*, 438 U.S. 696 (1978), the Supreme Court held that there was an implied reservation of water in National Forests solely to conserve the water flows and to furnish a continuous supply of timber for the people. Secondary purposes, such as recreation and wildlife, did not have reserved rights.

These constructions did not bar the United States from proceeding to acquire additional water rights pursuant to state law for other purposes. They did recognize that Congress did not intend wholesale preemption of state water law and the appropriation of all available waters. Recently, however, at least at the district court level, the doctrine is being subjected to contortions. Legislation which alters the management of previously withdrawn lands is being held to be a new reservation entitled to new implied water rights. Secondary purposes are being bootstrapped to create new preemptions. The designation of previously withdrawn lands as wilderness, which restricts management discretion, was recently held by a district court in Colorado to be a new reservation with new reserved water rights. This ruling came despite the fact that the Wilderness Act in fact forecloses one of the two primary purposes for which National Forests were created and, if anything, should effect a relinquishment of any federal implied reservation of water for timber supply. Whether the circuit courts and the Supreme Court are prepared to reverse themselves and adopt this novel attitude, one conclusion is clear. Congress must, in all future land decisions, expressly address the issue of reserved water. We can no longer rely on judicial restraint.

Compounding the problem is the fact that we are increasingly confronted with legislation containing lengthy statements of findings, policies and purposes. These statements have become an open-ended invitation permitting the courts to select some or all of the "purposes" as the basis for the reservation of water in uncontemplated quantities. Any avoidable uncertainty as to the future availability of scarce water resources is no longer acceptable in our

view. This situation is even more troublesome in areas such as the Upper Basin States which have not yet received their Compact allocations. It can also affect the legitimate expectations of junior appropriators on over-appropriated streams. Congress will need to examine each land management statute carefully to avoid the development of novel concepts by the courts. This is certainly true of any initial withdrawals where we can no longer rely on the restraint exercised previously by the courts. It is also true with respect to other decisions such as wilderness designations of previously withdrawn lands. It may be that in a particular instance Congress wants to reserve waters. That, however, should be a decision made by Congress, not the courts.

The inclusion of wilderness in the express reservation is, we believe, salutory since this is an initial withdrawal. Absent the explicit inclusion of the limited wilderness designation, the more expansive purposes of the monument may have resulted in a greater assertion of a federal reserved water right. The amendment, however, restricts the federal reserved water right for monument purposes solely to those areas outside of the wilderness and within the wilderness for those purposes as limited by the provisions of the Wilderness Act. Since this is an initial withdrawal, under current case law, and implied federal reservation of water would have occurred. We do not in any sense view this language as what we believe to be a completely unsupported assertion of reserved water rights in wilderness overlays on previously withdrawn areas, such as National Forests, National Parks, or other areas. We find no merit in the assertions by Judge Kane in *Sierra Club* v. *Lyng* that the designation of areas as wilderness effects a new reservation. The more reasoned views of the Supreme Court and the Courts of Appeals limiting federal reserved water rights to the minimum necessary to fulfill the primary purposes of the initial withdrawal represent the limits of federal preemption. However, difficult it may be to resolve this issue in a case by case basis, such is the responsibility of Congress. In any event, this decision is no more difficult than deciding on acreage or boundaries, whether to grandfather or extinguish valid existing rights, to acquire inholdings by purchase, exchange, condemnation, or legislative taking. These are all difficult decisions, but they are ones which the Legislative not the Executive, and certainly not the Judicial, Branches of government should undertake. Especially in the arid west decisions with respect to water will have long range effects on individual states options. Only the Legislative Branch has the representation to ensure that the interests of the affected states are considered and protected. In this instance, the Senate delegation from the state has considered the limited resources and sought to protect senior rights while achieving the purposes of the legislation.

El Malpais is simply the first measure before this Committee this Congress. The sponsors have crafted a well considered and tightly drawn bill. It is concise and its purposes are clear, limited, and unambiguous. In this instance, the language adopted meets what we believe to be the minimum requirements for any future legislation. Those requirements are:

(1) That Congress state what water rights, if any, it chooses to reserve as an express reservation and at the same time

reject any implied reservation. Just as we would not put landowners into perpetual limbo on the precise boundaries of a reservation, we also owe water users the courtesy of identifying what precisely we are doing with respect to existing and future availability and usage. In some instances Congress should go so far as to quantify the reservation, in others simply enumerate the purposes for which the reservation is made;

(2) That the federal government should perfect these express rights pursuant to the procedural requirements of state law. Whether this occurs in a general stream adjudication or by direct application to the state, this is essential if the states are to be able to plan for the use of their resources and water users are to know what rights their neighbor, the federal government, asserts,

(3) That any additional rights be acquired pursuant to both substantive and procedural requirements of state law. Again, this appears to us to be simple fairness and respect for the state's interest and jurisdiction.

In general, we would expect the Congress to defer to the wishes of the affected state and the delegation from the state in defining the extent of the reservation, if any, much as we do in determining acreage and boundaries. Our only interest is in ensuring that the Congress, not the courts, determine what the intent of a measure is with respect to water.

JAMES A. MCCLURE.
MALCOLM WALLOP.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act H.R. 403, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF SEPTEMBER 5, 1962

AN ACT To revise the boundaries of Capulin Mountain National Monument, New Mexico, to authorize acquisition of lands therein, and for other purposes, approved September 5, 1962 (76 Stat. 436)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to preserve the scenic and scientific integrity of the Capulin Mountain National Monument in the State of New Mexico, and to provide for the enjoyment thereof by the public, the boundaries of the monument [are thereby revised to include the following additional lands:

[NEW MEXICO PRINCIPAL MERIDIAN

[Township 29 north, range 28 east: section 5, north half northwest quarter southeast quarter northeast quarter northeast quarter southwest quarter, southeast quarter northwest quarter, northeast quarter southwest quarter northwest quarter, south half southeast quarter northwest quarter northwest quarter, south half south half northeast quarter northwest quarter, containing approximately 95 acres.] *shall include the lands and interests in lands as generally depicted on the map entitled "Capulin Volcano National Monument Boundary Map" which is numbered 125-80,014 and dated January 1987.*

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